

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division

JOHN DOE,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 7:18-cv-170
)	Judge Elizabeth K. Dillon
)	
VIRGINIA POLYTECHNIC INSTITUTE)	
AND STATE UNIVERSITY, TIMOTHY)	
SANDS,FRANK SHUSHOK, JR.,)	
ENNIS MCCRERY,CAROLINE GREEN,)	
and KYLE ROSE,)	
)	
Defendants.)	

JOINT MOTION TO DISMISS

Defendants Virginia Polytechnic Institute and State University, Timothy Sands, Frank Shushok, Jr., Ennis McCrery, Caroline Green, and Kyle Rose move jointly, by counsel, pursuant to Rules 12(b)(6) and 12(b)(1) of the Federal Rules of Civil Procedure for an order dismissing Plaintiff's Complaint. As set forth and discussed in the attached Exhibit and the contemporaneously filed Joint Memorandum in Support, Defendants move on the following grounds:

1. Plaintiff's Complaint does not establish that Plaintiff is entitled to relief under any legal theory which might be plausibly suggested by the facts alleged;
2. Plaintiff pleads legal conclusions as factual allegations and fails to allege valid claims against Defendants;

3. Plaintiff's Counts I, II, III, and IV are barred by the applicable statute of limitations as evidenced by Exhibit A;

4. Plaintiff's Count IV, V, and VI, are barred by Sovereign Immunity and the failure to provide statutory notice;

5. Plaintiff's Count I should be dismissed because plaintiff can allege no property interest and does not make allegation against a person;

6. Plaintiff's Count VI is barred by lack of subject matter jurisdiction because Plaintiff has no standing;

7. Plaintiff's Count IV should be dismissed there is no cause of action for a negligent investigation.

8. Plaintiff's Count I, II, IV, V, and VI should be dismissed because Virginia Polytechnic Institute and State University is protected by Eleventh Amendment Immunity.

9. Plaintiff's Count I, II, III, IV, V, and VI, should be dismissed because Plaintiff failed to provide the proper pre-suit notice required by the Code of Virginia.

10. The claims against the individual defendants should be dismissed on the basis of qualified immunity and because there is no cause of action against individuals for violations of Title IX.

WHEREFORE, based on the foregoing and their contemporaneously filed memorandum, Defendants, jointly, request that Plaintiff's Complaint be dismissed,

with prejudice, in its entirety, and that Defendants be awarded their costs and fees expended.

Respectfully submitted,

VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY, TIMOTHY
SANDS, FRANK SHUSHOK, JR., ENNIS
MCCRERY, CAROLINE GREEN, and KYLE
ROSE

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CERTIFICATE OF SERVICE

I hereby certify that, on this 21st day of November, 2018, the foregoing JOINT MOTION TO DISMISS was filed electronically with the Clerk of Court using the CM/ECF system, which will send notification of such filing (NEF), to the following:

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